

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 ACTIVISION PUBLISHING, INC., a
12 Delaware corporation,

13 Plaintiff,

14 v.

15 JOHN TAM, an individual, JAMIE
16 YANG, an individual, COREY FONG,
17 an individual, DOUG KENNEDY, an
18 individual, HONG LIP YOW, an
19 individual, RAYMOND YOW, an
20 individual, REVERB
COMMUNICATIONS, INC., a
California corporation, and THE ANT
COMMANDOS, INC., a California
corporation,

21 Defendants.
22
23
24
25
26
27
28

Case No. C 07-03536 MEJ

**[PROPOSED] CONSENT
JUDGMENT AND PERMANENT
INJUNCTION AS TO
DEFENDANTS RAYMOND
YOW, HONG LIP YOW AND
THE ANT COMMANDOS, INC.**

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 ACTIVISION PUBLISHING, INC., a
12 Delaware corporation,

13 Plaintiff,

14 v.

15 JOHN TAM, an individual, JAMIE
16 YANG, an individual, COREY FONG,
17 an individual, DOUG KENNEDY, an
18 individual, HONG LIP YOW, an
19 individual, RAYMOND YOW, an
20 individual, REVERB
COMMUNICATIONS, INC., a
California corporation, and THE ANT
COMMANDOS, INC., a California
corporation,

21 Defendants.
22
23
24
25
26
27
28

Case No. CV 07-00464 PA (Ex)

**[PROPOSED] CONSENT
JUDGMENT AND PERMANENT
INJUNCTION AS TO
DEFENDANTS RAYMOND
YOW, HONG LIP YOW AND
THE ANT COMMANDOS, INC.**

1 WHEREAS plaintiff Activision Publishing, Inc. ("Activision") and
2 defendants Hong Lip Yow, Raymond Yow and The Ant Commandos, Inc.
3 (collectively "Defendants") have agreed in a separate confidential agreement to
4 settlement of the matters in issue between them and to entry of this Consent
5 Judgment and Permanent Injunction, it is hereby ORDERED, ADJUDGED, AND
6 DECREED THAT:

7 1. Activision alleged claims against Hong Lip Yow, Raymond Yow and
8 TAC for: (1) copyright infringement under 17 U.S.C. § 501, *et seq.*; (2) violation
9 of Section 43(a) of the Lanham Act under 15 U.S.C. § 1125(a); (3) violation of the
10 Computer Fraud and Abuse Act pursuant to 18 U.S.C. §§ 1030(a)(4) and (a)(5)(B);
11 (4) violation of California Penal Code § 502; (5) misappropriation of trade secrets
12 under California Civil Code §§ 3426, *et seq.*; (6) misappropriation of confidential
13 information; (7) intentional interference with contractual relations; (8) interference
14 with prospective economic advantage; (9) California statutory unfair competition
15 under California Business and Professions Code § 17200, *et seq.*; and (10) common
16 law unfair competition.

17 2. This Court has jurisdiction over all of the parties in this action and
18 over the subject matter in issue based on 28 U.S.C. §§1331, 1338(a) and 1367(a), as
19 well as 15 U.S.C. § 1121(a) and 18 U.S.C. § 1030(g). This Court further has
20 continuing jurisdiction to enforce the terms and provisions of this Consent
21 Judgment and Permanent Injunction. Venue is also proper in this Court pursuant to
22 28 U.S.C. §§1391(b).

23 3. Plaintiff Activision is a Delaware corporation, having its principal
24 place of business at 3100 Ocean Park Boulevard, Santa Monica, California 90405.

25 4. Defendant The Ant Commandos, Inc. ("TAC") is a California
26 corporation, having its principal place of business at 13521 Benson Avenue, Chino,
27 California 91710.

1 5. Defendant Hong Yip Low, an individual, resides in California and is
2 President of TAC.

3 6. Defendant Raymond Yow, an individual, resides in California and is
4 Director of Marketing of TAC.

5 7. Activision is the owner of the copyright in the audiovisual material
6 associated with the Guitar Hero™ franchise, which has been registered in the
7 United States. Copyright Registration PA-1-322-764 for the audio visual content of
8 Guitar Hero™ is valid and enforceable throughout the United States.

9 8. Valid contracts exist between Activision and the Former Employees,
10 which expressly obligate them to maintain the confidentiality of Activision's trade
11 secrets and confidential information, and to not use such information in competition
12 with Activision. Valid employment contracts existed between Activision and both
13 Jamie Yang and John Tam, which expressly obligated them to remain employed
14 with Activision through at least May 31, 2007.

15 9. Activision Proprietary Information¹ includes, but is not limited to, the
16 following confidential and trade secret information, which derives independent

17
18 ¹ Activision Proprietary Information includes, but is not limited to, any and
19 all trade secrets, confidential knowledge, data or any other proprietary information
20 pertaining to any business of the Company or any of its clients, customers or
21 consultants, licensees or affiliates. By way of illustration but not limitation,
22 Activision Proprietary Information includes (a) inventions, ideas, improvements,
23 discoveries, trade secrets, processes, data, programs, knowledge, know-how,
24 designs, techniques, formulas, test data, computer code, other works of authorship
25 and designs whether or not patentable, copyrightable, or otherwise protected by
26 law, and whether or not conceived of or prepared by me, either alone or jointly
27 with others; (b) information regarding research, development, new products and
28 services, marketing plans and strategies, merchandising and selling, business plans,
strategies, forecasts, projections, profits, investments, operations, financings,
records, budgets and unpublished financial statements, licenses, prices and costs,
suppliers and customers; and; information regarding research, development, new
products and services, marketing plans and strategies, merchandising and selling,
business plans, strategies, forecasts, projections, profits, investments, operations,
financings, records, budgets and unpublished financial statements, licenses, prices

1 economic value from not being generally known to the public or to other persons
2 who can obtain economic value from its disclosure or use:

3 (a) Financial information related to the Guitar Hero™ franchise,
4 including but not limited to, profit and loss information, cost information,
5 expenses, contract terms, sales numbers and forecasts, information contained
6 in the Guitar Hero II™ Budget Summary, information contained in the Guitar
7 Hero II™ North American Xbox 360™ Strategy PowerPoint, information
8 contained in the Variable Sales & Marketing spreadsheet,

9 (b) Marketing information related to the Guitar Hero™ franchise,
10 including but not limited to marketing partners, contract terms, marketing
11 categories, information contained in the Guitar Hero™ franchise plans, and
12 identified growth areas for the Guitar Hero™ franchise,

13 (c) Product information related to the Guitar Hero™ franchise,
14 including but not limited to product design, such as the design for the Guitar
15 Hero II™ Xbox 360™ controller design, future product ideas and designs,

16 (d) Profit and loss statements developed by the Former Employees
17 which were derived from the Guitar Hero™ franchise financial information,
18 including such statements developed for Hourglass Interactive and/or
19 Lodestone Entertainment,

20 (e) Information related to music licensing and in game advertising
21 for the Guitar Hero™ franchise, including but not limited to contract terms,
22 identities of possible future songs and artists to include, and identities of
23 partners for licensing or in game advertising, and

24 (continued...)

25 and costs, suppliers and customer; and (c) identity, requirements, preferences,
26 practices and methods of doing business of specific parties with whom the
27 Company transacts business, and information regarding the skills and compensation
28 of other employees of the Company and independent contractors performing services
for the Company.

1 (f) Vendor information related to the Guitar Hero™ franchise,
2 including but not limited to vendor identities and contact lists, vendor
3 pricing, and vendor contract terms.

4 10. Based upon the stipulation of the parties, it is hereby ORDERED,
5 ADJUDGED AND DECREED THAT:

6 A. Hong Lip Yow, Raymond Yow and TAC shall pay Activision Publishing,
7 Inc. damages in the amount of two hundred fifty thousand dollars (\$250,000).
8 This obligation is joint and several.

9 B. Hong Lip Yow, Raymond Yow, TAC, their, officers, directors, agents,
10 servants, employees, attorneys, and those in active concert or participation
11 with any of them who receive actual notice of this injunction by personal
12 service or otherwise ARE RESTRAINED AND ENJOINED from:

- 13 1. Copying, distributing, displaying or using any content derived or
14 copied from the Guitar Hero™ or Guitar Hero II™ video game;
- 15 2. Copying, distributing, displaying or using the game demo created by
16 John Tam based on Guitar Hero™ and StepMania, screenshots of
17 which are attached hereto as Exhibit 1 (the "Tam Demo") and/or
18 copying, distributing, displaying or using any content derived or
19 copied therefrom;
- 20 3. Manufacturing, selling, offering for sale, advertising or distributing the
21 Tam Demo or any rhythm-based video game including or derived from
22 any Activision Proprietary Information;
- 23 4. Taking any steps to develop, market, manufacture, sell or distribute
24 any guitar or drum based video games, with the exception of any work
25 that TAC can establish through documentary evidence was
26 independently developed without the involvement of Corey Fong,
27 Jamie Yang, John Tam, Reverb Communications and/or Doug
28

1 Kennedy, or is otherwise based on work with respect to existing
2 products that do not use any of Activision's Proprietary Information;

- 3 5. Using, disclosing, transferring, distributing or reproducing any
4 Activision Proprietary Information and any materials or information
5 derived therefrom, including but not limited to, using it in connection
6 with developing a music or rhythm-based game, or in starting a
7 company, said Activision Proprietary Information including but not
8 limited to:

- 9 • Financial information related to the Guitar Hero™ franchise,
10 including but not limited to, profit and loss information, cost
11 information, expenses, contract terms, sales numbers and
12 forecasts, information contained in the Guitar Hero II™ Budget
13 Summary, information contained in the Guitar Hero II™ North
14 American Xbox 360™ Strategy PowerPoint, information
15 contained in the Variable Sales & Marketing spreadsheet,
16 • Marketing information related to the Guitar Hero™ franchise,
17 including but not limited to marketing partners, contract terms,
18 marketing categories, information contained in the Guitar
19 Hero™ franchise plans, and identified growth areas for the
20 Guitar Hero™ franchise,
21 • Product information related to the Guitar Hero™ franchise ,
22 including but not limited to product design, and future product
23 ideas and designs as identified in the franchise plan or any other
24 documents produced in this case,
25 • Profit and loss statements developed by the Former Employees
26 which were derived from Guitar Hero™ franchise financial
27 information, including such statements developed for
28 Lodestone,

- 1 • Information related to music licensing and in game advertising
- 2 for the Guitar Hero™ franchise, including but not limited to
- 3 contract terms, identities of possible future songs and artists to
- 4 include, and identities of partners for licensing or in game
- 5 advertising, and
- 6 • Vendor information related to the Guitar Hero™ franchise,
- 7 including but not limited to vendor identities and contact lists,
- 8 vendor pricing, and vendor contract terms;
- 9 6. Disclosing, transferring, distributing, reproducing or using any of the
- 10 business plans developed by the Former Employees or otherwise
- 11 derived from those individuals for Hong Lip Yow, Raymond Yow,
- 12 TAC, or for Lodestone;
- 13 7. Soliciting Activision employees for a period of one (1) year;
- 14 8. Taking any steps to develop, market, manufacture, sell (except for
- 15 resale only) or distribute any of the confidential peripheral devices
- 16 disclosed in Appendix A to the confidential Settlement Agreement for
- 17 a period of four (4) months;
- 18 9. Soliciting any of the Activision partners and growth areas identified in
- 19 Appendix B to the confidential Settlement Agreement with respect to
- 20 any business relationship that relates to a music-based, interactive
- 21 video game that includes the use of a simulated guitar, drum, keyboard
- 22 or synthesizer, or any peripheral devices for such a game, for a period
- 23 of one (1) year;
- 24 10. Soliciting any of the Activision partners and growth areas identified in
- 25 Appendix D to the confidential Settlement Agreement with respect to
- 26 any business relationship that relates to a music-based, interactive
- 27 video game that includes the use of a simulated guitar, drum, keyboard
- 28

- 1 or synthesizer, or any peripheral devices for such a game, for a period
2 of four (4) months; and
- 3 11. Soliciting any of the manufacturing vendors identified in Appendix C
4 to the confidential Settlement Agreement for a period of one (1) year.
- 5 C. Defendants shall, within five (5) days of entry of this Consent Judgment and
6 Permanent Injunction, deliver the documents and things listed below in their
7 possession, custody or control, including allowing for the inspection of the
8 computers of Raymond Yow and Hong Lip Yow to obtain such documents
9 and things, and shall file a written certification with the Court stating that
10 they have done so and have not retained any such documents and things or
11 any copies, electronic or otherwise, of such things:
- 12 1. All Activision property, including but not limited to documents, files,
13 materials and things containing or derived from Activision Proprietary
14 Information and/or that Defendants acquired, received, and/or
15 developed from or with the Former Employees having anything to do
16 with the video game business; and
- 17 2. All documents, files, materials and things related to the Lodestone
18 business venture and/or otherwise related to any communications with
19 or involving the Former Employees, Doug Kennedy, Reverb
20 Communications, Inc. and/or any third party with whom Defendants
21 communicated related to the Lodestone business venture.
- 22 D. Service by mail upon the counsel of record of a copy of this Consent
23 Judgment and Permanent Injunction entered by the Court is deemed
24 sufficient notice to Defendants under Rule 65(d) of the Federal Rules of Civil
25 Procedure. It shall not be necessary for any Defendant to sign any form of
26 acknowledgement of service.
- 27 E. Except as otherwise provided for in the Settlement Agreement, the parties
28 shall bear their own attorneys' fees and costs.

1
2 **IT IS SO ORDERED.**

3
4 Dated: June ____, 2007

By: _____
Hon. Maria-Elena James
United States District Court Magistrate Judge

5
6
7
8 APPROVED AS TO FORM AND CONTENT:

9
10 Dated: June 26, 2007

JONES DAY

11
12 By: Michael Tomasulo
Michael A. Tomasulo

13
14 Attorneys for Plaintiff
ACTIVISION PUBLISHING, INC.

15 Dated: June 26, 2007

OSWALD & YAP

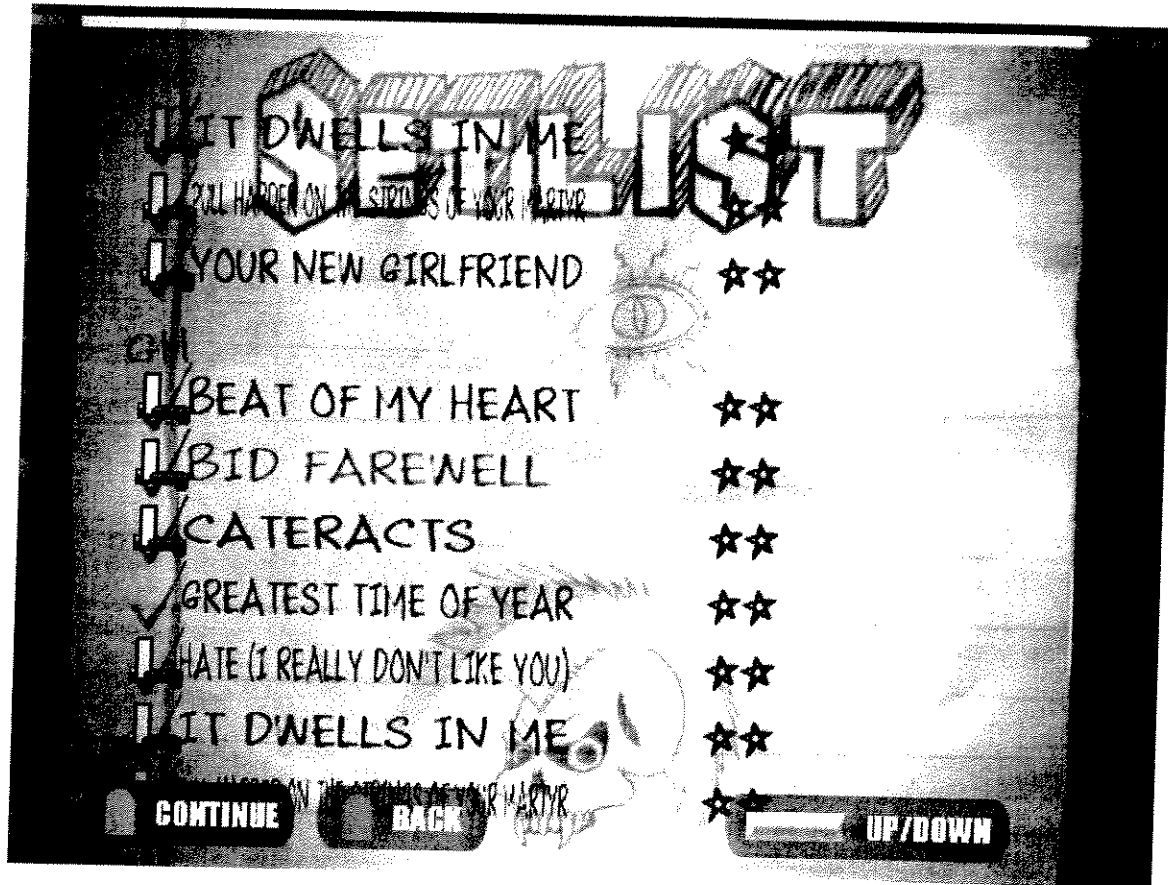
16
17 By: Michael A. Oswald
Michael A. Oswald

18
19 Attorneys for Defendants
20 HONG LIP YOW, RAYMOND YOW AND
21 THE ANT COMMANDOS, INC.
22
23
24
25
26
27
28

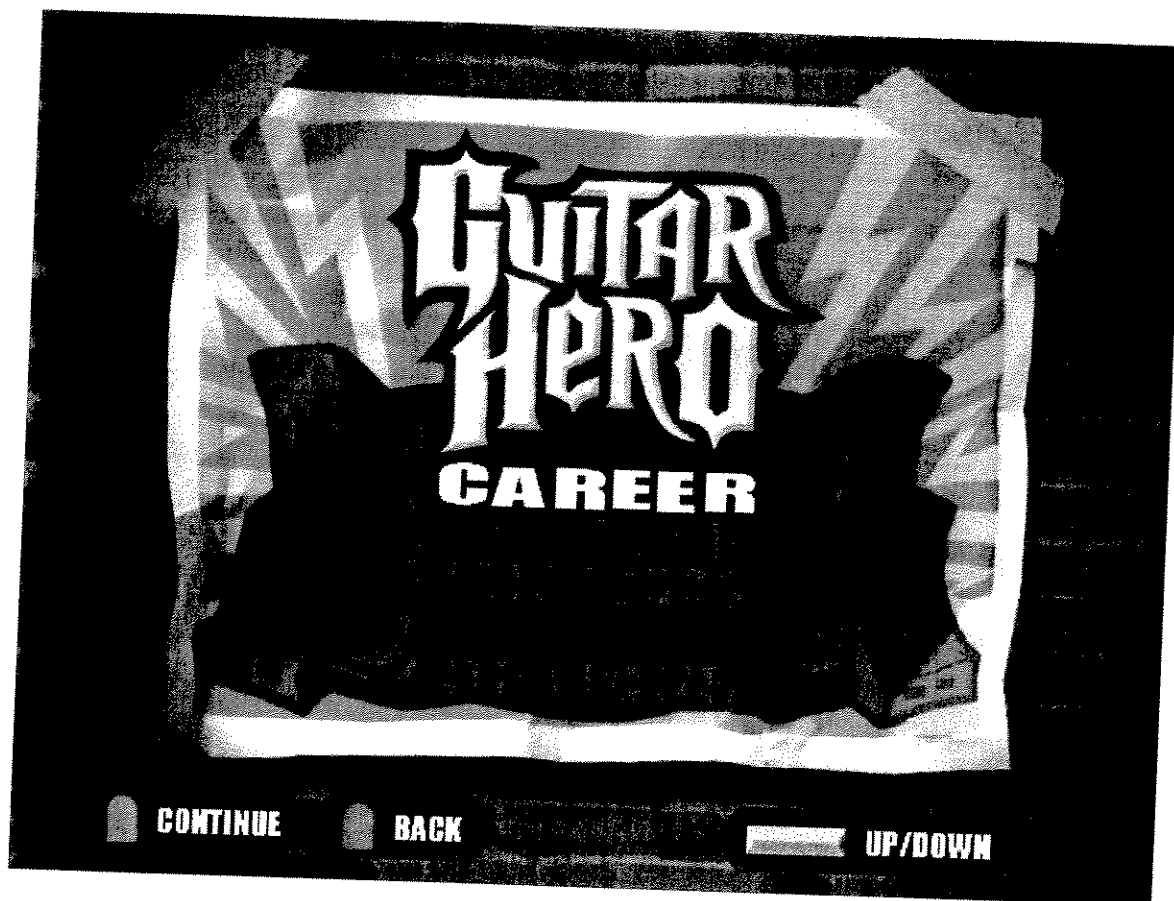
EXHIBIT 1



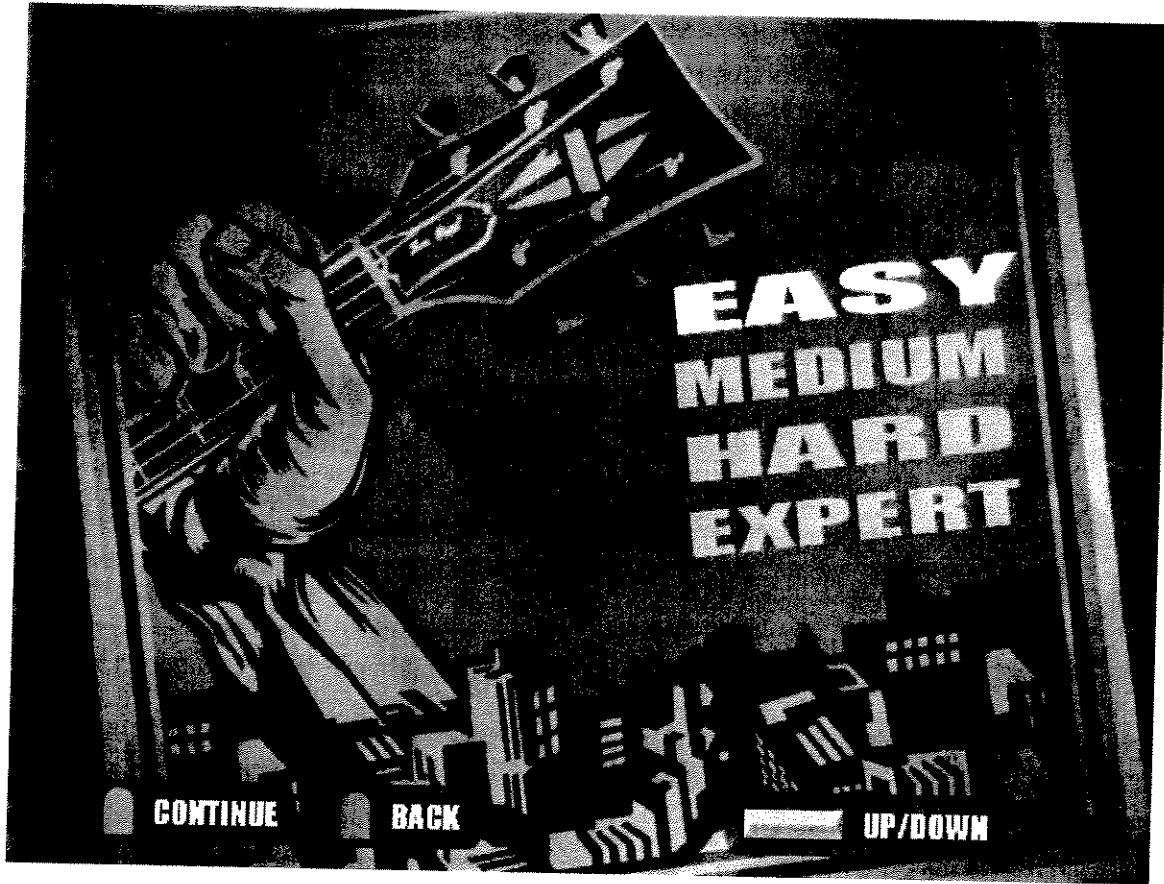
Screen Shot from
Tam Demo



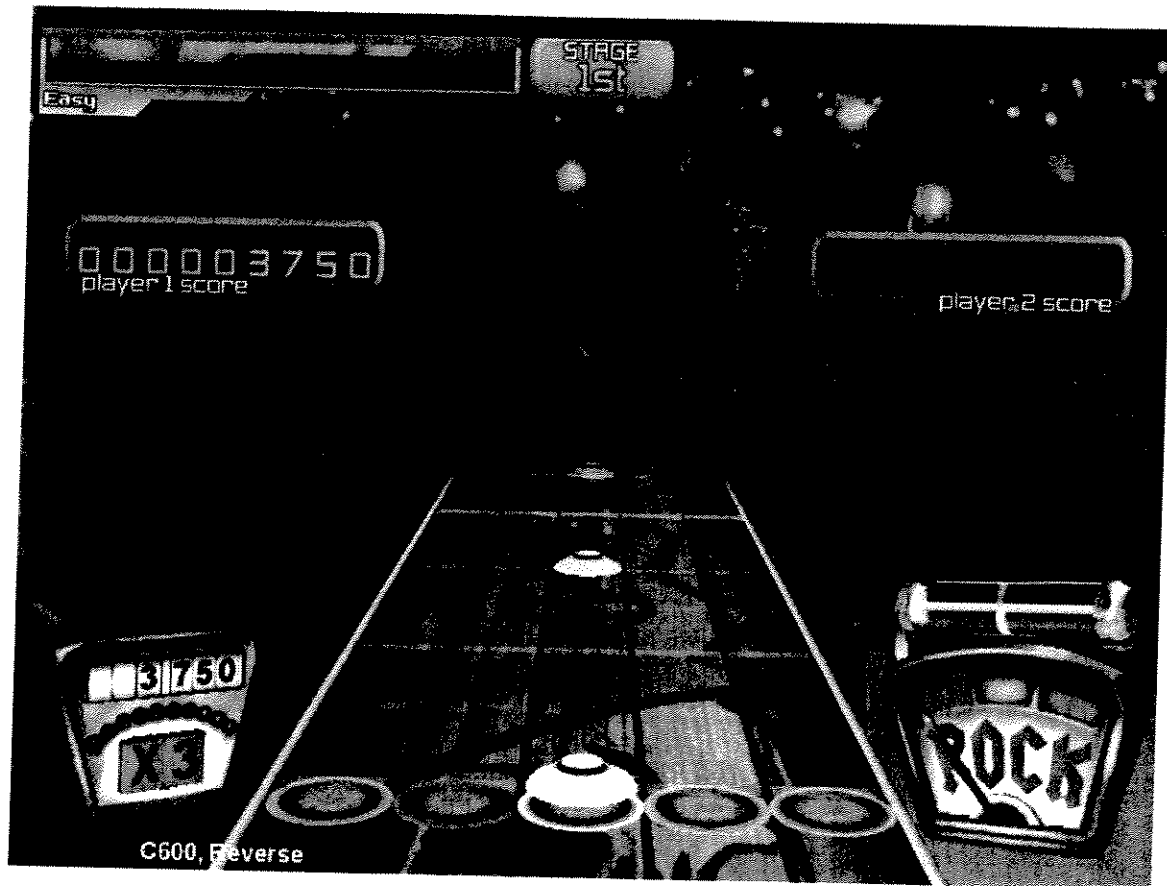
Screen Shot from
Tam Demo



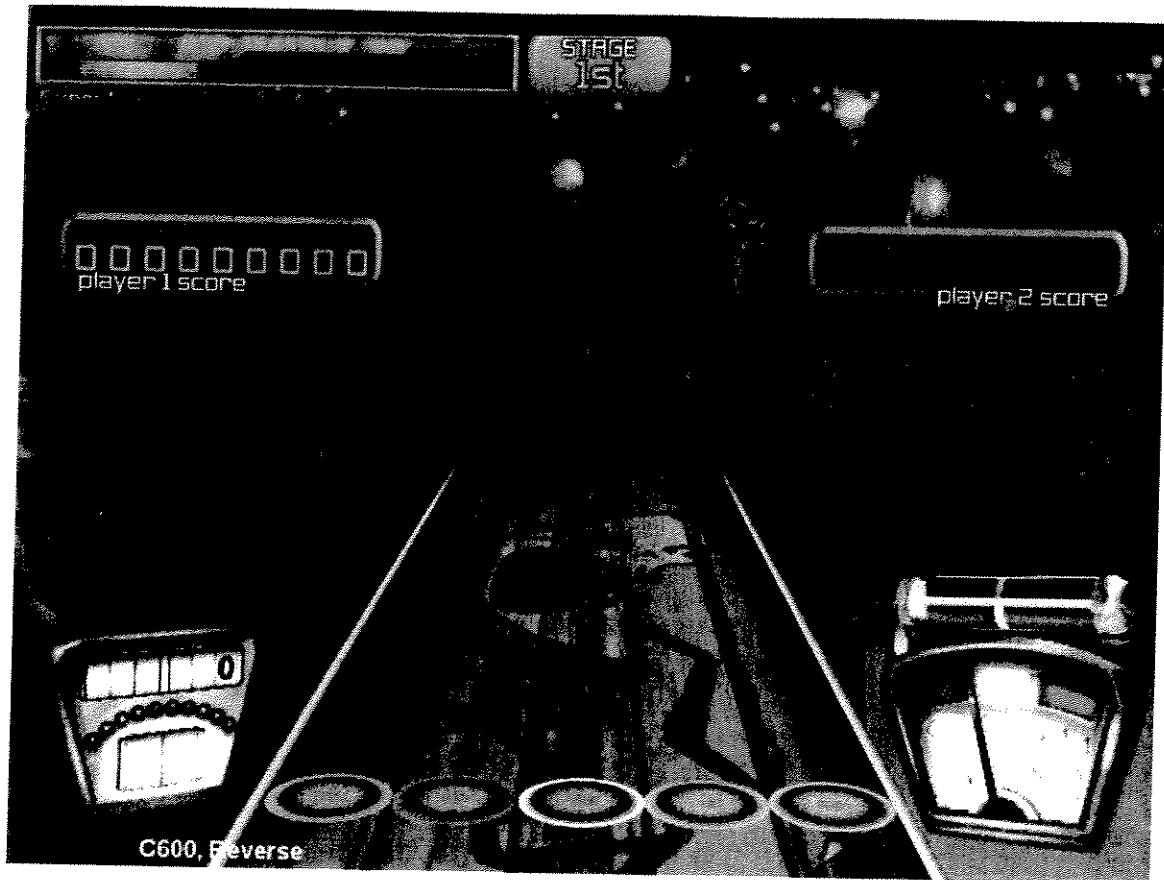
Screen Shot from
Tam Demo



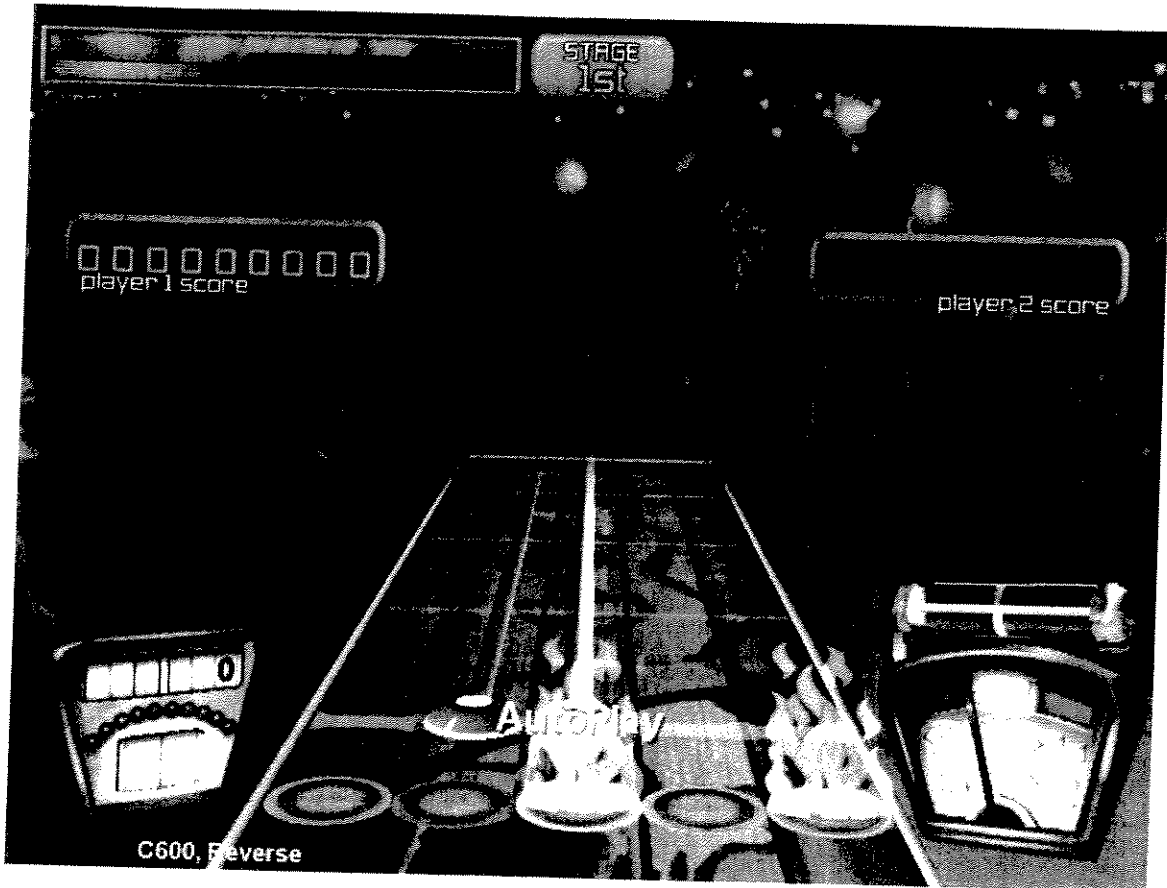
Screen Shot from
Tam Demo



Screen Shot from
Tam Demo



Screen Shot from
Tam Demo



Screen Shot from
Tam Demo